No. 708

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1923.

SAM MICHAELSON, DAN CULLEN, FRED HENSTRA, OLE NORTH, ART DANIELS, JOE RITCHIE, MATT ANDERSON, JOHN HAGEN, ARLEY MARTIN and CLARENCE MICHAELSON,

Petitioners,

vs.

THE UNITED STATES, ex rel. CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY,

Respondent.

Petition for Writ of Certiorari to the Circuit Court of Appeals for the Seventh Circuit.

COPY OF OPINION OF COURT OF APPEALS.

DONALD R. RICHBERG,
JOHN A. CADIGAN,
PETER B. CADIGAN,
Attorneys for Petitioners.

DONALD R. RICHBERG,
JACKSON H. RALSTON,
Counsel for Petitioners

BARNARD & MILLER PRINT, CHICAGO 137

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SAM MICHAELSON, DAN CULLEN, FRED HENSTRA, OLE NORTH, ART DANIELS, JOE RITCHIE, MATT ANDERSON, JOHN HAGEN, ARLEY MARTIN and CLARENCE MICHAELSON,

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THE UNITED STATES, ex rel. CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully represent, that

(1) On July 20, 1922, The Chicago, St. Paul, Minneapolis & Omaha Railway Company, respondent herein, filed its bill in equity in the District Court of the United States for the Western District of Wisconsin against certain individuals employed by the respondent Railway Company, officers and members of various labor organizations, alleging that the controversy arises under the Constitution and Laws of the United States, and particularly the Clayton Act, so-called, approved October 5, 1914, and charging the defendants named therein with having "entered into a conspiracy for the purpose of re-

straining and interfering with commence between the several states, carried on and to be carried on by the plaintiff, pursuant to the prosecution of its business and its duty as a common carrier of persons and property, both interstate and intrastate, and that as a part of said conspiracy the said defendants have entered upon a campaign and course of procedure aimed at the prevention of the repair of plaintiff's locomotives, cars and equipment used in the prosecution of its business, and to this end said defendants and each and all of them are adopting means unlawful in their character to prevent the plaintiff from employing men to work in its shops, at the cities of Superior, Hudson, Elroy, Spooner, Altoona, Eau Claire and Ashland in said district and elsewhere therein, where it carries on the general repair of its locomotives, cars and equipment; and in furtherance of such conspiracy the said defendants, and each of them, are adopting unlawful means to coerce, prevent and interfere with the lawful employment of employes,—".

Upon filing the bill of complaint a temporary restraining order issued out of the U. S. District Court for the Western District of Wisconsin, on July 20, 1922, directed against the defendants, and others, without notice, restraining the defendants, your petitioners herein, among others, from preventing or attempting to prevent any person by threats, intimidation, force and violence from accepting employment of the plaintiff railway company, and limited the practice of picketing so that but one representative of all the labor organizations could be maintained at each point of ingress and egress to and from its shops and grounds. The preliminary restraining order was continued in effect until August 18, 1922, when after a hearing on issue joined by the defendants, a temporary injunction issued out of the said court.

(2) The original suit in equity was dismissed by the solicitors for the plaintiff Railway Company on October 31, 1922, without prejudice to any contempt proceedings arising out of the violation of the temporary restraining order or injunction.

(3) On August 18, 1922, the plaintiff Railway Company procured a rule to show cause, citing the petitioners herein as defendants, why they should not be committed for contempt and violation of the preliminary restraining order issued July 20, 1922. Affidavits were filed supporting the motion alleging that certain of the affiants, employees of the plaintiff, were accosted by the defendants and that intimidating remarks were addressed to them by said defendants.

At the trial thereof the defendants, your petitioners herein, upon filing their separate answers, moved the court for a jury trial on the ground that the case was fairly covered by Section 22 of the Clayton Act. The motion for a jury trial was denied by the court.

Thereupon said defendants perfected an appeal from said order or decree to the Circuit Court of Appeals for the Seventh Circuit. Said cause was entered and docketed in said Circuit Court of Appeals, entitled *Sam Michaelson et al., Plaintiffs in Error,* v. *The United States ex rel. Chicago, St. Paul, Minneapolis and Omaha Railway Company, Defendants in Error,* as cause No. 3221.

The errors assigned and filed in said appeal were as follows:

No. I. That the District Court erred in denying the motion of defendants', your petitioners herein, demanding a jury trial, as provided by law.

No. II. That the evidence was wholly insufficient to sustain the judgment, and that the said District Court had no jurisdiction to impose sentence.

No. III. That the District Court erred in imposing sentence on the defendants', your petitioners herein, for the reason that such sentence was without warrant in law.

The said Circuit Court of Appeals thereafter granted permission to counsel for the Railway Employes' Department to file a separate brief; that in such separate brief a special effort was made by said counsel to induce the court to hold that strikers were still to be regarded as "employees" and within the protection afforded by the Clayton Act to "employees".

Afterwards, to wit, on the 2d day of May, 1923, the case came on to be heard in the Circuit Court of Appeals before the Honorable Francis E. Baker, the Honorable Evan A. Evans, and the Honorable George T. Page, and on the 11th day of July, 1923, a decree or order was entered in said cause by the Circuit Court of Appeals of the Seventh Circuit affirming the judgment of the U. S. District Court for the Western District of Wisconsin.

The said Circuit Court of Appeals held that the motion demanding jury trial, in accordance with Section 22 of the Clayton Act, was properly denied by the District Court, on the following grounds:

(1) That the defendants, your petitioners herein, did not come within the purview of the Clayton Act, which extends its protection only to an "employee" and (or) "employees", because any strike against an interstate railroad or railroads is illegal; that, therefore, the defendants, your petitioners herein, were in the position not of employees on strike, but of strangers.

(2) That, even if the defendants, your petitioners herein, were "employees" within the meaning of the Clayton Act, nevertheless the motion demanding jury trial was properly denied by the District Court, because said Section 22 of the Clayton Act is unconstitutional, as being in violation of the provisions of Article III, Sections 1 and 2 of the Constitution of the United States.

Thereafter your petitioners filed a petition for rehearing in said cause, which was subsequently denied.

(4) Your petitioners are advised by counsel that said judgment of the Circuit Court of Appeals is final, and is erroneous, and that this Honorable Court should require the case to be certified to it for its review and determination under the Act of Congress permitting causes made final in the Circuit Court of Appeals to be certified for revision.

Your petitioners are further advised by counsel that their motion in the District Court, demanding a jury trial, was improperly and erroneously denied by said District Court, and that the criminal contempt proceedings brought against them, and heard and determined by the District Court without a jury, although a jury had been demanded, were erroneous and contrary to law. That the said Section 22 of the Clayton Act providing for a jury trial in contempt cases, is constitutional and that the decision of the Circuit Court of Appeals declaring that part of that Act of Congress unconstitutional is erronoeus.

The reasons we have for applying for this writ of *certiorari* are:

a. The *great public importance* of the questions involved:

1. The decision of the Circuit Court of Appeals declares invalid a solemn enactment of the Congress of the United States, duly approved by the President. If this honorable Court does not grant the petitioners' prayers for a write of *certiorari*, the result is that a court, inferior under the Constitution, and not co-ordinate in power with Congress and the Chief Executive, has set to naught their deliberate enactment; such a result would tend to weaken public confidence in the courts, and to disturb the delicate balance between the branches of the government.

2. This cause calls for an authoritative interpretation of Article III, Sections 1 and 2 of the Constitution of the United States, and is a case of first impression before this honorable Court.
3. Section 22 of the Clayton Act (the validity of which is the principal question involved in this cause) has its chief importance in proceedings growing out of industrial disputes. Interest in an authoritative ruling by this honorable Court on its constitutionality is therefore by no means confined to these present petitioners, but extends to the millions of wage workers who now are or are likely later to become involved in an industrial dispute.
4. The same question has been raised in many other inferior courts of the United States. *In re Atchison,* 184 Fed. 604 (S. D. Fla. 1922); See *Canoe Creek Coal Co.* v. *Christianson,* 281 Fed. 559 (W. D. Ky. 1922).

b. A decision by this honorable Court will answer the need for *uniformity* and *certainty* so essential to the guidance of the numerous inferior Federal courts before whom the question is often raised.

Wherefore your petitioners respectfully pray that a writ of certiorari be issued under the seal of the court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, sitting at Chicago, Illinois, commanding the court to certify and send to this court on a day to be designated a full and complete transcript of the record and all proceedings of the Circuit Court of Appeals had in said cause, to the end that this cause may be reviewed and determined by this Honorable Court as provided by the Act of Congress approved March 3, 1891, establishing the Circuit Court of Appeals and defining and regulating their jurisdiction; and that the said judgment of the Circuit Court of Appeals be reversed by this Honorable Court, and for such further relief as may seem proper.

And your petitioners will ever pray.

Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Ritchie, Matt Anderson, John Hagen, Arley Martin and Clarence Michaelson.

By DONALD R. RICHBERG,
JOHN A. CADIGAN,
PETER B. CADIGAN,
Their Attorneys.

DONALD R. RICHBERG,
JACKSON H. RALSTON,
Counsel for Petitioners.

CERTIFICATE.

I, DONALD R. RICHBERG, of Chicago, Illinois, an attorney regularly admitted to practice in the United States Spureme Court, do certify that I am the duly appointed counsel for the above petitioners, and that I am acquainted with the proceeding in said cause, and that the facts therein stated are true to the best of my knowledge and belief.

DONALD R. RICHBERG,

Chicago, December .., 1923.

APPENDIX.

Opinion of the Court.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 3221. October Term, 1922, April Session, 1923.

SAM MICHAELSON, DAN CULLEN, FRED HENSTRA, OLE NORTH, ART DANIELS, JOE RICHIE, MATT ANDERSON, JOHN HAGEN, ARLEY MARTIN and CLARENCE MICHAELSON,
Plaintiffs in Error,
vs.
THE UNITED STATES OF AMERICA, ex rel. CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY,
Defendant in Error.

} Error to the District Court of the United States for the Western District of Wisconsin.

Before Baker, Evans and Page, *Circuit Judges.*

Baker, *Circuit Judge*, delivered the opinion of the Court:

This writ of error brings up for review judgments against plaintiffs in error for criminal contempt.

On July 1, 1922, these men went out on the so-called strike of the shop-crafts unions. Shortly thereafter the trial court, on the bill and motion of the railroad company, relator herein, entered a temporary restraining order which was found in this proceeding to have been violated.

I. As the case is here on writ of error the challenge

of the sufficiency of the evidence goes only to the question whether a *prima facie* case of violation was made. *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324. We have examined the evidence and find an abundant showing against plaintiffs in error to support the finding of intimidation of shop workmen and of picketing by groups in a manner condemned in recent cases. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184; *Truax* v. *Corrigan*, 257 U. S. 312.

II. After this contempt case had been brought here, the railroad company dismissed its bill for injunction. This did not have the effect of canceling these judgments which had already been entered.

III. Did the court err in overruling the demand of plaintiffs in error for a jury trial?

Section 20 of the Clayton Act (Comp. St. 1918, Sec. 1243 d) speaks of the respective rights of "employers and employees" in any injunction case "involving or growing out of a dispute concerning terms or conditions of employment."

Under Section 21 (Comp. St. 1918, Sec. 1245 a), if an injunctive order is violated by the doing of an act which would be "also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed," the offender shall be proceeded against for contempt as provided in Section 22 (Comp. St. 1918, Sec. 1245 b), namely: "Such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be,

to the practice in criminal cases prosecuted by indictment or upon information."

Counsel seem to be agreed, and we think properly so, that plaintiffs in error, in order to have the benefit of the Clayton Act, must have been "employees" within the meaning of the Act from the time of the so-called strike down till after the violations.

They also do not question that the violations would constitute criminal offenses under statutes of the United States and of Wisconsin.

But they do not agree upon the construction of Section 22. Counsel for defendant in error point to the permissive word "may" in the phrases "the trial may be by a jury" and "the court may impanel a jury." For plaintiffs in error it is argued that the permissive word "may" is to be construed as mandatory wherever that course is necessary in order to preserve the clear meaning of other words and phrases in the context (36 Cyc. p. 1160), and that the word "demand" (to claim as a matter of right) and the phrases "a jury shall be impaneled" and "such trial shall conform to the practice in criminal cases" require that permission be taken as duty. Obviously there is an ambiguity, an inconsistency, an opposition of words. We think the ambiguity can be cleared by a reference to the history of the times preceding the Clayton Act and a consideration of the asserted evil to be cured by the proposed legislation. For many years political and social writers and speakers had been denouncing the interference of judges in the combats between labor and capital and had been insisting that the question of unlawful conduct in such combats should not be decided except by jury trial. A political party gave a pledge to abolish "government by injunction," meaning by that quoted phrase the chancellor's use of punitive and coercive means to enforce the chancellor's decree,

which, after full hearing and subject to the right of appeal for the correction of errors, adjudged that proven trespasses upon property should cease. And the bill, introduced by Senator Clayton, was drafted by the labor unions. As drafted the bill did not contain the ambiguity we now find. In the course of the bill's progress to enactment a word was inserted which may be given a permissive or a mandatory sense. Rather than attribute to Congress an intent to issue a "*brutum fulmen,*" it should be agreed that the intent was to give to the special class in special cases the absolute right to trial by jury.

Nevertheless plaintiffs in error were not entitled to a trial by jury.

(1) If their going out on the so-called shop-crafts strike ended the relation of employer and employee between them and the railroad company, they would not be within the special class selected by the Clayton Act.

In the case of a controversy over wages and conditions of work in a private and local industry, we agree with counsel for plaintiffs in error that a "strike" does not of itself terminate the relation of employer and employee. A controversy arises, and the employees, then at work, say to their employer: "We shall stop work until you are in what we may consider a more reasonable state of mind. We shall deprive you of our labor as a legitimate means of exerting economic pressure to induce you to yield. If we do go out, we shall remain at hand, ready to negotiate with you concerning fair wages and working rules, and ready to return to work the moment we can agree." If, by reason of a failure to agree, the employees stop their work, a "strike" is on. They are no longer working and receiving wages; but, in the absence of any action other than above indicated looking to a termination of the relationship, they are entitled to rank as "employees" with the adjective "striking" defining their im-

mediate status. And a "lockout" by the employer is the exact counterpart of the "strike" by the employees. In the industrial combat the two sides must have equal and reciprocal rights in exerting economic pressure. 5 Illinois Law Review 453; 31 Yale Journal 321; *Iron Moulders' Union* v. *Allis-Chalmers Co.*, 166 Fed. 45; *Gasaway* v. *Borderland Coal Corporation*, 278 Fed. 56; *Uden* v. *Schaeffer*, 188 Pac. 395.

Among the cases in the Supreme Court dealing with the respective rights of capital and labor in economic controversies, those arising in private and local industries predominate. *Loewe* v. *Lawlor*, 208 U. S. 274; *Paine Lumber Co.* v. *Neal*, 244 U. S. 459; *Hitchman Coke & Coal Co.* v. *Mitchell*, 245 U. S. 229; *Duplex Co.* v. *Deering*, 254 U. S. 443; *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184; *Truax* v. *Corrigan*, 257 U. S. 312. In the American Foundries case, the strike involved a steel plant in Granite City, Illinois. In the Truax case, the center of the industrial storm was a restaurant on "Main Street" in Bisbee, Arizona. In no case of which we have cognizance has the point been made that the rules for economic combats in private and local industries, which society tolerates, have no just application to our present-day system of railroad transportation. When common carriers were few and small and relatively local, when the interference with the non-combatants was no greater than in a private industry, and when the common carrier was unfettered as a combatant, there could be no greater objection to a strike against a common carrier than to one against a restaurant. In all such cases the non-combatants will have to wait until advancing civilization shall have put the strike in limbo with the duel. At the time of the Pullman strike (*in re Debs*, 158 U. S. 564), though the disturbance in and about Chicago was very considerable, the railroad unions

did not have their hands at the throat of the Nation, and the railroads as combatants had not become completely fettered. Today the concerted action of railroad unions in stopping transportation might destroy our industries and imperil the lives of our people. But it is not upon a consideration of public distress or public necessity that we base a legal distinction exempting interstate railroads from the "strikes" that are permissible in private industry. To be a legal distinction (and not a mere suggestion of further Congressional action) it must be based on the interpretation and application of the law as it stands today.

(a) Interstate railroads are under control of the Interstate Commerce Commission with respect to the nature, quality and amount of service to be given to passengers, to shippers, and to other carriers. Comp. St. 1918, Secs. 8563-8583; Comp. St. 1923, Sec. 8563, Subd. 10-21. This service is the only commodity that the railroads have, from the sale of which they can derive an income. A private employer, free to fight and engage in one of these so-called "industrial combats," might consider it wise to sign a treaty of peace giving his employees higher wages, because legally he could cheapen his commodity to the same degree and thereby keep his business alive. Interstate railroads have no such control of their commodity.

(b) Or the private employer, being legally free to do so, might think it best to make up his increased cost of production by increasing the price of his commodity. Interstate railroads have no such control of their prices. The Interstate Commerce Commission on its own initiative has power to classify and regulate the businses, and to fix maximum or minimum, or maximum and minimum, or the particular rates, fares or charges for all the business. Comp. St. 1923, Sec. 8583 (1).

(c) Or the private employer, being legally free to do so, might conclude to shut up shop, wind up his business, and quit. Interstate railroads have no legal right to quit. Most of them have State charters for fragmentary parts of their systems. Most of them have parts that were welded together by concurrent permissive legislation of several States. It is not merely the consequences of violating or failing to live up to the requirements of the State charters that are to be considered; all interstate railroads are now forbidden to "abandon all or any portion of a line of railroad or the operation thereof" without the approval and certified consent of the Commission. If they should attempt to quit without such consent, the Attorney General, or the Commission, or a State Commission, or any party in interest, is authorized to go to court and get an injunction on showing an attempted or intended abandonment of operation. Title IV of the Transportation Act, 1920; Comp. St. 1923, Sec. 8563, (18)-(20).

From the foregoing considerations it is apparent that interstate railroads are bound hand and foot. They have no choice as to what they will sell or for how much. They dare not quit. They are forbidden by law to quit. They can not exert any sort of "economic pressure" in any sort of "industrial combat." They are powerless to use the "lockout" as a weapon against their employees.* Turning back now to the definition of a "strike," we see that, in an industrial combat wherein the rights of the combatants are equal and reciprocal, the strike was only tolerated as a weapon on one side because the other side was armed with an equivalent weapon. Mutual freedom

* The fact that the Commission could not constitutionally deny an interstate railroad the right to abandon its line or a part thereof if there was no reasonable prospect of profitable operation in the future (*Bullock* v. *R. R. Comm. of Florida*, 254 U. S. 513, 521), does not militate against the position that an interstate railroad is forbidden by law to use the "lockout."

is the vitals of "collective bargaining" or any bargaining. In our judgment the very principles on which the strike was originally found to be lawful now require that the Interstate Commerce Act and Title IV of the Transportation Act be interpreted and applied to forbid an assault upon a helplessly fettered opponent and to forbid the calling of such an act a combat.

It follows that plaintiffs in error were not engaged in a lawful strike. Their acts toward the railroad company were necessarily the same as those of strangers. Consequently they were not qualified to demand a jury trial under the Clayton Act.

This does not mean that, because employees can not conduct lawful strikes against interstate railroads under the law as it now stands, they have become enslaved or in any way bound to work. *Arthur* v. *Oakes*, 63 Fed. 320. It merely means that when they refuse to work, either singly or collectively, they sever themselves from their jobs. They are then at perfect liberty to seek new employment.

(2) Another ground supports the conclusion that plaintiffs in error, on and after July 1, 1922, were not employees carrying on a controversy over wages and working conditions with the railroad company as their employer, and therefore were not entitled to invoke the benefit of the jury provision in the Clayton Act.

In its bill of complaint the railroad company set forth the substance of Title III of the Transportation Act of 1920. Comp. St. 1923, Sec. 10071¼, subd. ee-jjj. That part of the Act creates the Railroad Labor Board and treats of the duties of the Board in reference to wage and other disputes between interstate railroads and their employees. On May 25, 1922, the Board rendered its decision fixing wages for employees in the shop crafts, to become effective on July 1, 1922. The railroad company

accepted said decision, and intended and attempted to comply therewith; but plaintiffs in error and the other employees in the shop crafts refused to abide by the decision, and in defiance of the Board abandoned the service of the railroad company.

Although beyond a moral sanction there is no penalty for violating the Board's decision except the Board's publication of its opinion that its decision is being violated (Title III of the Act, Sec. 313, Comp. St. 1923, Sec. 10071¼ iii; *Pennsylvania Rld. Co.* v. *United States Railroad Labor Board,* U. S. , Feb. 19, 1923), that part of the Act declares a public policy which should be accepted and made effective in civil actions irrespective of the character and amount of punishment prescribed for the offenses viewed as crimes or misdemeanors.

In our judgment, therefore, the so-called strike of the shop-crafts unions was a controversy with, or a strike against, the Labor Board as an instrumentality of our National government, and is to be classed with the insurrection of the Boston policemen.

Here, again, there is neither enslavement nor legal compulsion to work; the men are at liberty to quit, singly or collectively, but must recognize that they no longer are employees of their former employer.

(3) Accepting for the sake of the argument the contention of plaintiffs in error that they were entitled to invoke the jury provision of the Clayton Act, nevertheless their demand for a trial by jury was rightly denied because that part of the Act is unconstitutional.

Art. III, Sec. 1: "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."

Article III, Sec. 2, Par. 1: "The judicial power shall extend to all cases in law and equity arising under this

Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

Article III, Sec. 2, Par. 2, after defining the original jurisdiction of the Supreme Court, proceeds: "In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

The original jurisdiction of the Supreme Court comes directly from the Constitution and can not be enlarged or diminished by Congress. The appellate jurisdiction of the Supreme Court can be limited as to subject matter and regulated as to procedure. Appellate jurisdiction assumes the existence of trial courts. And Congress in ordaining trial courts and other courts inferior to the Supreme Court can limit their jurisdiction as to subject matter and regulate their procedure. Viewing the inferior courts, and also the Supreme Court as an appellate tribunal, we see that Congress, the agency to exercise the legislative power of the United States, can, as a potter, shape the vessel of jurisdiction, the capacity to receive; but, the vessel having been made, the judicial power of the United States is poured into the vessel, large or small, not by Congress, but by the Constitution.

Some terms in the Constitution are, and were meant to be relative. For example, "due process of law" and "liberty" in the Fifth and Fourteenth Amendments were not intended to limit the police power forever to those matters which it had laid hold upon when those amendments were adopted. Other terms are, and were meant to be, absolute. They cover now exactly the same ground they did when adopted, without possibility of enlargement or diminution except by amendment. For example: "Habeas corpus" in Article I, Sec. 9; "trial by jury" in Article III, Sec. 2, Par. 3, and in the Sixth and Seventh Amendments; "cases in law," "cases in equity," "crim-

inal prosecutions," "indictment of a grand jury," "suits at common law," in Article III, Sec. 2, Par. 1, and in the Fifth, Sixth and Seventh Amendments.

Congress may limit the jurisdiction of an inferior court to hearing criminal cases, or to designated kinds of criminal cases; but Congress can not constitutionally deprive the parties in such a court of the right of trial by jury. The same is true of trials of "cases in law." And the jury in such a civil or criminal court must comprise twelve jurors and their verdict must be unanimous. Similarly Congress may limit the jurisdiction of an inferior court to hearing "cases in equity," or to designated kinds of equity cases; but Congress can not constitutionally deprive the parties in an equity court of the right of trial by the chancellor. *Martin* v. *Hunter's Lessees,* 1 Wheat. 331; *In re Atchison,* 284 Fed. 604.

A proceeding called a contempt proceeding, perhaps not very happily, is the means of executing the decree in equity. A plaintiff has been found by a decree in equity to be entitled to enjoy certain property rights without being further disturbed by the defendant. But the defendant persists. To enforce the decree the court may try the deterrent effect of fine, or imprisonment for a definite period, or may give the plaintiff civil relief by keeping the disturber away until the plaintiff is in the secure enjoyment of his property rights. Either way, the vindication or enforcement of the decree must be held to be an inherent power of the equity court, a power within the power to render the decree. *In re Debs,* 158 U. S. 564, at pp. 593-6.

The judgments are AFFIRMED.

A true Copy:
Teste:

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Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.